



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,254	11/28/2000	Riccardo Dalla-Favera	58044-A/JPW/EMW	5325

7590 12/01/2004

John P White Esquire  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, NY 10036

EXAMINER
----------

CANELLA, KAREN A

ART UNIT	PAPER NUMBER
----------	--------------

1642

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/724,254

Applicant(s)

DALLA-FAVERA, RICCARDO

Examiner

Karen A Canella

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 43,45-47,69 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43,45-47,69 and 70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: attachment.

### DETAILED ACTION

1. Claims 1-25, 32-42 and 44 have been canceled. Claim 43 has been amended. Claims 43, 45-47, 69 and 70 are pending and under consideration.
2. Sections of Title 35, U.S. code not found in this action can be found in a prior action.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 43, 45-47, 69 and 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Ashkenazi et al (US2002132252 A1).

Claim 43 is drawn to an isolated antibody directed to an IRTA2 protein wherein said IRTA2 protein comprises amino acid sequence of SEQ ID NO:44, 3 or 41. Claim 45 embodies the antibody of claim 43 wherein said antibody is a monoclonal antibody. Claim 46 embodies the antibody of claim 43 wherein the antibody is a murine monoclonal antibody or a humanized monoclonal antibody. Claim 47 embodies the method of claim 43 wherein the antibody is conjugated to a therapeutic agent. Claim 69 embodies the antibody of claim 43 wherein the

Art Unit: 1642

antibody is a polyclonal antibody. Claim 70 embodies the antibody of claim 47, wherein the therapeutic agent comprises a radioisotope, a toxin or a chemotherapeutic agent.


Ashkenazi et al disclose the PRO820 polypeptide(paragraph 0080) which is identical to residues 1-102 of the instant SEQ ID NO:41, as evidenced by the attached sequence alignment. Ashkenazi et al disclose polyclonal and monoclonal antibodies which bind to the PRO820 polypeptide (paragraphs 3436 and 3438). Ashkenazi et al disclose that the anti-PRO antibodies may comprise humanized antibodies (paragraph 3439), and that the invention also comprises antibodies of the invention conjugated to cytotoxic agents, radioisotopes or chemotherapeutic agents (paragraphs 3466 and 3467)

5. All other rejections and objections as set forth or maintained in the previous Office action are withdrawn.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen A Canella whose telephone number is (571)272-0828. The examiner can normally be reached on 10 a.m. to 9 p.m. M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Siew can be reached on (571)272-0787. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
KAREN A. CANELLA PH.D  
PRIMARY EXAMINER

Karen A. Canella, Ph.D.

11/29/2004